

United States 1493
Circuit Court of Appeals
For the Ninth Circuit. 1

O. L. SHAFTER ESTATE COMPANY, a Corporation,

Plaintiff in Error,

vs.

W. T. MOONEY, Trustee in Bankruptcy of the Estate of WILLIAM BARTHOLOMEW, Bankrupt,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

REUBEN G. HUNT, Esq., Claus Spreckels Bldg.,
San Francisco, Cal.,

Attorney for Plaintiff and Appellee.

CHARLES W. SLACK, Esq., and EDGAR T.
ZOOK, Esq., Alaska Commercial Building,
San Francisco, Cal.,

Attorneys for Defendant and Appellant.
[1*]

In the District Court of the United States in
and for the Southern Division of the Northern
District of California.

No. 1657.

W. T. MOONEY, as Trustee in Bankruptcy of the
Estate of WM. BARTHOLOMEW,
Plaintiff,

vs.

O. L. SHAFTER ESTATE CO., a Corporation,
Defendant.

COMPLAINT TO RECOVER PREFERENCE
UNDER BANKRUPTCY ACT.

Now comes plaintiff above named and for cause
of action against defendant above named alleges:

I.

On the 17th day of October, 1925, the above-named

*Page-number appearing at the foot of page of original certified
Transcript of Record.

Wm. Bartholomew filed in the above-entitled court his voluntary petition in bankruptcy with schedules, and thereafter and on the 23d day of November, 1925, the said Wm. Bartholomew was duly adjudicated a bankrupt by said Court upon said petition and further proceedings in the matter of the administration of the estate of the bankrupt were referred by said Court to A. B. Kreft, Esq., a Referee in Bankruptcy thereof. Thereafter and on the 12th day of December, 1925, the said W. T. Mooney, with the approval of the said Referee was appointed trustee of the estate of the bankrupt as his first meeting of creditors. Thereafter and on the 18th day of December, 1925, the said W. T. Mooney duly qualified as such trustee. Ever since said 18th day of December, 1925, the said W. T. Mooney has been and now is the duly appointed, qualified and acting trustee in bankruptcy [2] of said estate.

II.

At and during all the dates and times herein mentioned, the above-named O. L. Shafter Estate Co., was and now is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business at the city and county of San Francisco, in said State.

III.

At the time of the filing of the said petition in bankruptcy and at and during all of the dates and times during the four months preceding the said filing and subsequent to on or about the 1st day of October, 1925, the said bankrupt was insolvent.

and indebted to general creditors upon antecedent debts, including the defendant, except in so far as the debt of defendant was satisfied as hereinafter mentioned, in an aggregate amount of about \$10,000.

IV.

On or about said 1st day of October, 1925, and while so indebted to defendant, the bank transferred to the defendant, out of the property of the bankrupt, which was subject to the claims of the said general creditors, the sum of \$1,764.25, in full payment of such antecedent general debt, so due the defendant as aforesaid, and thereby diminished the estate of the bankrupt to that extent.

V.

The effect of the enforcement of the said transfer will be to enable defendant, as such general creditor, to receive a greater percentage of its said debt, as of the date of the said transfer, than the other of the said creditors of the same class, to wit, the said class of general creditors. [3]

VI.

At the time of the said transfer as aforesaid, the defendant, or its agent acting therein, had reasonable cause to believe that the effect of the enforcement of the said transfer would be to enable the defendant, as of the date thereof, to obtain a preference voidable under the provisions of the Bankruptcy Act, as above related.

VII.

Subsequent to his appointment and qualifications

as aforesaid, and prior to the commencement of this action, plaintiff demanded of defendant the return of the said sum of \$1,764.25 to the bankrupt estate, but defendant at the time of said demand refused and ever since has refused and does now refuse to return the same or any part thereof to the bankrupt estate.

WHEREFORE, plaintiff prays for judgment against defendant for the sum of \$1764.25, together with interest thereon at the rate of 7% per annum, from and after the time of the commencement of this action until paid and for the costs of this action.

RUBEN G. HUNT,
Attorney for Plaintiff.

State of California,
County of Sonoma,—ss.

W. T. Mooney, being first duly sworn, deposes and says:

I am the plaintiff named in the foregoing complaint. I have read the same and know the contents thereof and the same is true of my own knowledge, except as to the matters stated on information or belief and as to those matters I believe it to be true.

W. T. MOONEY.

Subscribed and sworn to before me this 5th day of April, 1926.

J. W. GWINE,
Notary Public in and for the County of Sonoma,
State of California.

[Title of Court and Cause.]

ANSWER OF DEFENDANT.

The defendant O. L. Shafter Estate Company, a corporation, sued herein as O. L. Shafter Estate Co., a corporation, for its answer to the complaint herein of the above-named plaintiff, denies as follows:

Denies that on or about the 1st day of October, 1925, or while indebted to the said defendant, or at any other time, the above-named bankrupt transferred to the said defendant, out of the property of the said bankrupt subject to the claims of the general or other creditors, or to the claims or claim of any of them of the said bankrupt, upon antecedent or other debts, or otherwise or at all, the sum of \$1,764.25, or any other sum, in full or in part payment of any debt, antecedent, general or otherwise, due the said defendant.

WHEREFORE, the said defendant prays that the said plaintiff take nothing by this action, and that the said defendant have and recover judgment against the said plaintiff for its costs.

CHARLES W. SLACK and
EDGAR T. ZOOK,

Attorneys for Defendant.

State of California,

City and County of San Francisco,—ss.

A. Howard, being first duly sworn, deposes and says:

That affiant is an officer, to wit, the secretary, of

O. L. Shafter Estate Company, a corporation, the defendant in the within-entitled action, and as such secretary makes this affidavit for *on* on behalf of the said defendant corporation; that affiant has read the foregoing answer, and knows the contents thereof; and that the same is true of affiant's own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that affiant believes it to be true. [7]

A. HOWARD.

Subscribed and sworn to before me this 28th day of April, 1926.

[Seal] MINNIE V. COLLINS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed April 29, 1926.

Receipt of a copy of the within answer of defendant admitted this 29th day of April, 1926.

REUBEN G. HUNT,
Attorney for Trustee. [8]

[Title of Court and Cause.]

STIPULATION WAIVING TRIAL BY JURY.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, which is set for trial for Tuesday the 24th day of August, 1926, at the hour of 10 o'clock A. M. of that day, that the said cause shall be tried by the said Court without a jury.

Dated this 11th day of August, 1926.

REUBEN G. HUNT,

Attorney for Plaintiff.

CHARLES W. SLACK and

EDGAR T. ZOOK,

Attorneys for Defendant.

[Endorsed]: Filed August 11, 1926. [9]

At a stated term, to wit, the July Term, A. D. 1926, of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Friday, the 3d day of September, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM H. SAWTELLE, District Judge for the District of Arizona, designated to hold and holding this Court.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 3, 1926—
ORDER ALLOWING AMENDMENT TO
COMPLAINT AND ANSWER AND DI-
RECTING JUDGMENT TO BE ENTERED
IN FAVOR OF PLAINTIFF.

* * * By consent it is ordered that the complaint and the answer be amended on the face thereof in the particulars stated. The evidence being closed the case was thereupon argued, at the

conclusion of which it was ordered that judgment be entered herein in favor of plaintiff as prayed, on findings to be filed. [10]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Friday, the 10th day of September, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM H. SAWTELLE, District Judge for the District of Arizona, designated to hold and holding this Court.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 10, 1926
—ORDER DENYING DEFENDANT'S MOTION FOR ENTRY OF JUDGMENT IN ITS FAVOR.

Now comes Edgar T. Zook, Esq., attorney for defendant, and moves the Court for an order directing entry of judgment herein in favor of the defendant, and after hearing Mr. Zook, it was ordered that said motion be and the same is hereby denied, to which order the defendant duly excepted. [11]

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on regularly for trial before the above-entitled court, sitting without a jury, a jury having been waived by the parties, this 3d day of September, 1926, upon the complaint of the plaintiff and the answer of the defendant filed herein, Reuben G. Hunt, Esq., appearing as attorney for the plaintiff and Charles W. Slack, Esq., and Edgar T. Zook, Esq., appearing as attorneys for the defendant, and testimony having been offered and received on behalf of the issues raised by the pleadings, and the case having been submitted to the Court for decision, the Court hereby makes the following

FINDINGS OF FACT.

On the 17th day of October, 1925, the named Wm. Bartholomew filed in the above-entitled court his voluntary petition in bankruptcy with schedules, and thereafter and on the 23d day of November, 1925, the said Wm. Bartholomew was duly adjudicated a bankrupt by said court upon said petition and further proceedings in the matter of the administration of the estate of the bankrupt were referred by said court to A. B. Kreft, Esq., a referee in bankruptcy thereof. Thereafter and on the 12th day of December, 1925, the said W. T. Mooney, with the approval of the said referee was appointed trustee of the estate of the bankrupt at

his first meeting of creditors. Thereafter and on the 18th day of December, 1925, the said W. T. Mooney duly qualified as such trustee. Ever since said 18th day of December, 1925, the said W. T. Mooney has been and now [12] is the duly appointed, qualified and acting trustee in bankruptcy of said estate.

II.

At and during all the dates and times herein mentioned, the defendant, O. L. Shafter Estate Co., was and now is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business at the city and county of San Francisco in said state.

III.

At the time of the filing of the said petition in bankruptcy and during the four months prior thereto, the said bankrupt was insolvent and indebted to general creditors upon antecedent debts, including the defendant, except in so far as the debt of defendant was satisfied as hereinafter mentioned, in an aggregate amount of about \$10,000.

IV.

On or about said 1st day of October, 1925, and while so indebted to defendant, the bankrupt transferred to the defendant, out of the property of the bankrupt, which was subject to the claims of the said general creditors, the sum of \$1,764.25, in full payment of such antecedent general debt, so due the defendant as aforesaid, and thereby diminished the estate of the bankrupt to that extent.

V.

The effect of the enforcement of the said transfer will be to enable defendant, as such general creditor, to receiver a greater percentage of its said debt, as of the date of the said transfer, than the other of the said creditors of the same class, to wit, the said class of general creditors. [13]

VI.

At the time of the said transfer as aforesaid, the defendant, or its agent acting therein, had reasonable cause to believe that the effect of the enforcement of the said transfer would be to enable the defendant, as of the date thereof, to obtain a preference voidable under the provisions of the Bankruptcy Act, as above related.

VII.

Subsequent to his appointment and qualification as aforesaid, and prior to the commencement of this action, plaintiff demanded of defendant the return of the said sum of \$1,764.25 to the bankrupt estate, but defendant at the time of said demand refused and ever since has refused and does now refuse to return the same or any part thereof to the bankrupt estate.

From the foregoing findings of fact, the Court hereby makes the following

CONCLUSIONS OF LAW.

The plaintiff is entitled to a judgment against the defendant for the sum of \$1,764.25, together with interest thereon at the rate of seven per cent (7%) per annum, from and after the 16th day of

April, 1926, the time of the commencement of this action, amounting to \$50.95, and the costs of this action.

Let judgment be entered accordingly.

Dated: September 27, 1926.

WM. H. SAWTELLE,
District Judge.

[Endorsed]: Filed September 27, 1926.

Receipt of a copy of the within proposed findings of fact and conclusions of law is hereby admitted this 7th day of September, 1926.

CHARLES W. SLACK and
EDGAR ZOOK,
Attorneys for Defendant. [14]

(Title of Court and Cause.)

JUDGMENT ON FINDINGS.

This cause having come on regularly for trial upon the 3d day of September, 1926, before the Court sitting without a jury; a trial by jury having been specially waived by written stipulation filed; Reuben G. Hunt, Esq., appearing as attorney for plaintiff, and Charles W. Slack, Esq., and Edgar T. Zook, Esq., appearing as attorneys for defendant, and oral and documentary evidence on behalf of the respective parties having been introduced and closed and the cause having been submitted to the Court for consideration and decision, and the Court, after due deliberation having rendered its

decision and filed its findings and ordered that judgment be entered in accordance with said findings:

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that W. T. Mooney, as Trustee in Bankruptcy of the Estate of William Bartholomew, Plaintiff, do have and recover of and from O. L. Shafter Estate Co., a corporation, defendant, the sum of One Thousand Seven Hundred Sixty-four Dollars and 25/100 (\$1,764.25) Dollars, together with interest thereon at the rate of seven per cent (7%) per annum, from and after the 16th day of April, 1926, the time of the commencement of this action, amounting to \$50.95, together with his costs herein expended taxed at \$52.00.

Judgment entered September 27th, 1926.

WALTER B. MALING,
Clerk. [15]

[Title of Court and Cause.]

BILL OF EXCEPTIONS ON WRIT OF ERROR.

Be it remembered that the above-entitled cause came regularly on for trial on the 3d day of September, 1926, before Honorable William H. Sawtelle, Judge of the above-entitled court, sitting without a jury, a jury having been waived by written stipulation of the parties duly filed with the Clerk of the said court, Reuben G. Hunt, Esq., appearing as attorney for the plaintiff, and Messrs. Charles W. Slack and Edgar T. Zook appearing as attor-

neys for the defendant, whereupon the following proceedings were made:

TESTIMONY OF WILLIAM BARTHOLOMEW,
FOR PLAINTIFF.

WILLIAM BARTHOLOMEW, called as a witness for the plaintiff, testified as follows:

Direct Examination.

I reside at 2215 Buchanan Street, San Francisco, California. Up to October, 1925, I resided at the "N" Ranch, at Point Reyes, Marin County, California, which I was leasing from the defendant under a written lease. [17]

Thereupon, the lease between the defendant, O. L. Shafter Estate Company, and the witness, Bartholomew, dated September 22, 1924, was offered and read in evidence and marked Plaintiff's Exhibit 1. The said lease is in the words and figures following:

PLAINTIFF'S EXHIBIT No. 1.

THIS INDENTURE, made this 22d day of September, 1924, between O. L. Shafter Estate Company, a corporation (hereinafter called the "Owner"), the party of the first part, and Wm. Bartholomew (hereinafter called the "Renter"), the party of the second part,

WITNESSETH:

That the Owner hereby leases unto the Renter, and the Renter hereby hires from the Owner, that certain portion of the so-called Point Reyes Ranch, belonging to the Owner, situated in the County of

Marin, State of California, known as the "N" Ranch, together with one hundred and eight (108) cows, more or less, twenty-four (24) two-year-old heifers, more or less, and twenty-three (23) yearling heifers, more or less, for the term commencing on the 1st day of October, 1924, and ending on the 30th day of September, 1925, at and for the rent of two thousand five hundred dollars (\$2,500), payable and to be paid by the Renter to the Owner, in lawful money of the United States, in equal installments of six hundred and twenty-five dollars (\$625) respectively, on or before the 31st day of December, 1924, on or before the 31st day of March, 1925, on or before the 30th day of June, 1925, and on or before the 1st day of September, 1925, and at and for the further rent of twenty-six (26) of the best heifer calves, or, at the election of the Owner, an equal or less number of the best bull calves, in substitution therefor, calf for calf, from such of the best cows hereby leased as shall [18] come on or freshen at the beginning of the season of 1924-1925 deliverable and to be delivered by the Renter to the Owner, either in the main corral of the said premises hereby leased, or ^{at} ~~at~~ such other place on the said premises, or at such place on the said Point Reyes Ranch, or at the railroad station at Point Reyes, as may be designated by the Owner, and at such time or times as may be requested of the Renter by the Owner.

The parties hereto hereby covenant and agree as follows:

1. The Renter shall pay and deliver the said rents to the Owner at the times and in the manner herein provided therefor. The said calves, and any calves which may be substituted therefore, as hereinafter provided, may be branded and marked by the Owner at the time or times which the same shall be delivered by the Renter to the Owner, as aforesaid, and thereafter, the said calves, so branded and marked, at the election of the Owner, may be permitted by the Owner to remain on the said premises, and, in that event, the same shall be continued to be cared for by the Renter. No calves shall be butchered or otherwise disposed of by the Renter until the said twenty-six (26) calves shall be delivered by the Renter to the Owner, as hereinabove provided. If any of the said calves which shall be so permitted by the Owner to remain on the said premises shall die or be missing prior to the said 30th day of September, 1925, the Renter shall deliver to the Owner, as hereinabove provided from time to time, as may be requested of the Renter by the Owner, and not later than the said 30th day of September, 1925, an equal number of best calves from the said best cows hereby leased in substitution for such of the said calves as shall die [19] or be missing as aforesaid, and if not so delivered by the Renter to the Owner, then the Renter, at the election of the Owner, shall pay to the Owner, on demand, the fair market price thereof at the time or times when the same should be delivered by the Renter to the Owner, as hereinabove provided. All increase of the said cows and heifers hereby leased,

except as herein otherwise provided, and all other produce of the same, shall belong to the Renter, but all such increase, except as herein otherwise provided, shall be disposed of by the Renter as soon as reasonably possible. Bulls for the said cows and heifers shall be supplied to the Renter by the Owner, and the Renter shall breed the said cows and heifers to the said bulls at such times only as shall be directed by the Owner, and no other bulls shall be allowed by the Renter to run with the said cows and heifers without the permission of the Owner.

2. The said premises shall be used by the Renter for dairy purposes and for purposes incidental thereto, and for no other purposes. The Renter shall supply, at his own cost, such equipment as shall be necessary to the proper operation of the said premises by the Renter for the purposes for which the same are hereby leased. The Renter may sell his said equipment and other property, on the expiration of the term of this lease, to other persons who shall rent the said premises from the Owner, but no such sale shall be made by the Renter at a price in excess of the fair market value of the said equipment and other property.

3. The Renter shall live upon the said premises and shall personally manage the same. No persons objectionable to the Owner shall be permitted by the Renter to occupy or to remain on the said premises. No portion of the said premises shall be sublet by the Renter, and no animals of others shall be [20] allowed by the Renter to be pastured or fed on the said premises without the written consent

of the Owner. No assignment of this lease, whether voluntary or involuntary, shall be made by the Renter without the written consent of the Owner. No sale or other disposition shall be made by the Renter of this lease, or of any interest or profit therein, or arising out of this lease, except as herein otherwise provided, without the written consent of the Owner.

4. The Renter shall care for the said cows, heifers, calves, and bulls in the very best manner. Such portions of the said premises as may be suitable for cultivation, and as may be designated by the Owner, shall be cultivated by the Renter in the very best manner, and in proper seasons therefor, in grain, hay and other crops suitable for feed for the said livestock and for such horses, mules, hogs and poultry as may be kept by the Renter on the said premises, as hereinafter provided, and the seed for such crops shall be clean and of the best quality and shall be supplied by the Renter at his own cost, and such crops shall be cared for by the Renter in the very best manner.

The said crops shall belong to the Owner, and shall not be sold or otherwise disposed of, or removed from the said premises, by the Renter, but such thereof as may be necessary therefor shall be fed by the Renter to the said animals and poultry on the said premises during the term of this lease. All such other feed as shall be necessary for the said animals and poultry shall be supplied by the Renter at his own cost. So far as possible,

there shall be on the said premises, on the said 30th day of September, 1925, enough hay for a number of cows, heifers, bulls, horses and mules equal to the number herein specified, for the remainder of the fall of 1925, and for the winter of 1925-6, and for the spring of 1926. If any brush land on the said premises shall be cleared by the Renter, the Renter, however, may cultivate the same in such [21] crops as he may see fit, during the term of this lease, and for one (1) additional year should this lease be extended or renewed by the Owner for that period, and such crops may be sold or otherwise used or disposed of by the Renter, and the proceeds of any such sale or other disposition shall belong to the Renter.

5. The Renter shall be permitted to keep on the said premises such number of horses and mules only, not to exceed ten (10), as shall be necessary for and as shall be used in the operation of the said premises by the Renter. The Renter shall also be permitted to keep on the said premises such number of hogs and poultry only, of good breed and of sound condition as may be required to consume otherwise waste products, of the said dairy and of the said premises, and the said hogs and poultry and all increase and proceeds therefrom shall belong to the Renter. All animals and poultry on the said premises shall be kept by the Renter under proper restraint. All gates and bars on the said premises shall be kept closed by the Renter.

6. The Renter, at his own cost, shall keep the buildings, fences, gates, bars and other improve-

ments, including telephone poles and lines, watering troughs, wells, springs and other places of water supply, and roads now on the said premises, or which may be placed or constructed thereon or therein during the term of this lease, in good order, condition and repair, injury thereto by fire, act of God and public enemies excepted, and the Renter shall build all necessary division fences on the said premises, the materials for such repairs and fences to be furnished the Renter by the Owner, and the Owner to be the sole judge of kind and quantity of materials to be so furnished, and the times and places of furnishing the same. All improvements made on the said premises, whether by the Owner or by the Renter, shall belong to the Owner, and shall not be removed from or changed on the said premises by the Renter. The buildings, corrals, pens, and yards on the said premises shall be kept by the Renter [22] in a clean and orderly condition. The manure from the said corrals, pens and yards shall be removed therefrom and scattered by the Renter over the fields on the said premises, as may be directed by the Owner. The barns, dairy house and other out-buildings and the corrals and yards of the said premises shall be whitewashed by the Renter, at his own cost, in a proper manner, as directed by the Owner, once during the term of this lease. The Renter shall use all reasonable efforts to keep the said premises free from noxious weeds and plants and to keep the *the* said premises free from ground squirrels. In the event that the Renter shall fail to perform any of the work re-

quired by this paragraph to be performed by the Renter, after request by the Owner of the Renter to perform the same, such work may be performed by the Owner, at the election of the Owner, and the Renter shall pay to the Owner, on demand, the cost of the same.

7. The Renter, except as hereinabove otherwise provided, shall not cut or destroy any trees, shrubs or plants growing on the said premises, without the consent of the Owner, but may otherwise take such fire-wood and other timber and materials for fencing and repairs either from the said premises, or, with the permission of the Owner, from other lands of the Owner, as shall be necessary for use by the Renter on the said premises.

8. The Owner shall have the right to keep and have kept on the said premises not more than two (2) head of horses and mules, and not more than six (6) head of cattle, in addition to the said cows and heifers leased and in addition to the said bulls, and in addition to the said calves which shall be delivered by the Renter to the Owner, as aforesaid. The Owner shall also have the right to sell or otherwise dispose of such of the said cows and heifers hereby leased as may be or become diseased, or otherwise unsuitable for the purposes for which the same are hereby leased, as may become dry. [23] The Owner shall also have the right to lease to others the privilege of hunting and fishing on the said premises, and the use of the said premises, for those purposes, within the permission granted by the Owner therefor, shall be permitted by the Renter

to such lessees. The Renter shall not hunt, fish, capture or take game or fish from the said premises, or permit any of his employees or any members of his family so to do, and the Renter shall use all reasonable efforts to prevent others who shall not have the permission of the Owner so to do, to hunt, fish, capture or take game or fish from the said premises, and, generally, the Renter shall use all reasonable efforts to prevent trespassing on the said premises. The Owner, through its agents, and employees, and other tenants of the Owner, and, with the permission of the Owner, the owners and their tenants of lands adjacent to the lands of the Owner, shall also have reasonable ingress to and egress from and over the said premises. The Owner shall also have the right to cut and to have cut trees, shrubs and plants from the said premises and to remove the same and other materials therefrom for use on the said premises, or for use on other lands of the Owner, or for the purpose of sale or other disposition by the Owner.

9. If any rents payable or deliverable under this lease shall be due and unpaid or undelivered, or if any other moneys payable under this lease shall be due and unpaid, at the times when the same should be paid or delivered, as hereinabove provided, or if default shall be made in the performance of any of the covenants and agreements of this lease on the part of the Renter to be performed, then and from thenceforth it shall be lawful for the Owner to re-enter into or upon the said premises, and to remove all persons therefrom, and to repossess and

enjoy the said premises as in its first and former estate, and, at the election of the Owner, to terminate this lease, and the [24] remedies conferred upon the Owner under and by virtue of this lease, and otherwise by the law, shall be cumulative, and the exercise by the Owner of any of the said remedies shall not impair the right of the Owner to exercise any other of the said remedies. If any action to recover any of the said rents or other moneys, or for the breach or to restrain the breach of any of the covenants or agreements of this lease on the part of the Renter to be performed, or for the possession of the said premises, or other property hereby leased, shall be commenced by the Owner, the Renter shall pay to the Owner a reasonable attorney's fee, and, if judgment shall be recovered by the Owner in such action, the amount of such fee shall be included as a part of the judgment in such action.

10. The Renter, on the last day of the term of this lease, or other sooner termination of the estate hereby granted, shall peaceably and quietly leave, surrender and yield up unto the Owner the said premises and all the other said property hereby leased in as good order and condition as the same now are or may be placed during the term of this lease, reasonable use and wear thereof and injury thereto and destruction thereof by fire, act of God and public enemies excepted. In the event that the Renter shall hold over after the expiration of the term of this lease, such holding shall be at the will of the Owner.

(Testimony of William Bartholomew.)

11. Any failure or neglect of the Owner to take advantage of any cause for the termination of this lease, or for the forfeiture of the estate hereby granted, shall not be a waiver of any other cause for such termination or forfeiture then existing, or a waiver of any cause for such termination or forfeiture subsequently arising.

12. The terms of this lease and the covenants and agreements hereof shall bind and enure to the benefit of, as the case may be, the successors and assigns of the Owner and the [25] assigns of the Renter; but nothing contained in this lease shall be deemed to permit the assignment of this lease or of the estate hereby created, or of any interest therein of the Renter, whether voluntary or involuntary, without the consent in writing of the Owner first had and obtained.

IN WITNESS WHEREOF, the Owner, the party of the first part, has hereunto, and to a duplicate hereof, caused its corporate name to be subscribed and its corporate seal to be affixed, by its proper officer thereunto duly authorized, and the Renter, the party of the second part, has hereunto, and to the said duplicate hereof, set his hand and seal, the day and year first hereinabove written.

O. L. SHAFTER ESTATE COMPANY.

By CHARLES W. SLACK,

Vice President. (Corporate Seal)

WM. BARTHOLOMEW. (Seal)

WITNESS.—(Continuing.) I paid rent all the times I was there, for about three years, and I

(Testimony of William Bartholomew.)

paid all the rent with the exception of \$1400 odd. I dealt with L. C. Eastman, representing the Shafter Estate Company. He is the superintendent of the ranches up there. I did not apply for an extension of this lease or a new lease when this lease terminated. He demanded the payment of the rent. I told him I did not have the money. I was figuring on selling out and as soon as I sold out the place they would get their money. I owned all the equipment on the ranch, horses and wagons and milking machines and dairy utensils and engine and stuff. All they owned was the land, the cows and the buildings. I owned the rest of the stuff. [26]

W. T. Hall came to me first about two weeks before my lease was up and wanted to buy the ranch, so I sold the ranch for \$6,500. He wanted the place and I wanted to sell. He said he would take the ranch for \$6,500. He told me that he did not have all the money. He said he could raise about half of the money. We went over to Mr. Gwynn, of the Mercantile Trust Company, and Mr. Gwynn told Mr. Hall he would loan him half of the money, so we came home, and everything was fine and dandy.

About two or three days before the lease was up Mr. Hall came out and I asked him for a deposit on the place, which he would not give me. He said that Mr. Eastman told him not to give me any money at all. I figured then that there was something wrong somewhere and I told him that I would not sell the place, so he went away. So I

(Testimony of William Bartholomew.)

figured that I would sell some hogs and some stuff off the ranch and try to make up part of the rent which I owed to the Shafter Estate and take a new lease for another year. So I sold 26 head of hogs.

The night before the lease was up I met Mr. Eastman at Inverness and he told me that Mr. Hall was going out there the following morning, the first of the month, to take possession of the ranch. So I told him that he was not going out there, that I had no deposit on the place, that I had no money and that he was not going to take possession until I got some money. He said he was going out there. So the next morning Mr. Hall came out to the ranch. He said, "I cannot pay you the \$6,500.00. Mr. Eastman told me to take a pencil and paper and take down the stuff on the ranch and just give you what the stuff is worth on the ranch." I said, "No. No pencil and paper will you use here." He said, "All I can give you is \$4,500 for the ranch and for the stuff." So I did not know what to do about it. [27]

I went down and spoke to Mr. Martinelli, Mr. Grandi and Mr. Scillachi, who were creditors of mine. I told them the story.

I went down that morning to Inverness, and I met Mr. Hall and Mr. Eastman down there. Mr. Eastman asked me to go up to his house with Mr. Hall. We went up there. Mr. Hall asked me if I wanted to give him the place for the money. I told him he might as well have it, I guess, or something like that, so Mr. Hall wrote out Mr. Eastman

(Testimony of William Bartholomew.)

a check for some money. I did not see what it was. We went over to Mr. Martinelli's store and fixed everything in his store for \$4,500. After the \$1,700 was paid by Mr. Eastman, there was \$2,760 left or something like that. Mr. Martinelli and I asked Mr. Hall if he would not make it out for \$2,800 even money. There was \$1,400 and some dollars for the rent and \$300 for calves which were lost in the 1923 storm, and so he said he would make it for the \$2,800 even money. I did not see the check Mr. Hall gave Mr. Eastman, but it was supposed to be seventeen hundred and some dollars. In that conversation, they were to get \$1,400 back rent which I owed and \$300 for the calves before Mr. Hall could get the lease. That was said in the conversation between Hall and Eastman and myself on that occasion. There were some papers made out between Mr. Hall and myself at Mr. Martinelli's store.

Thereupon the following document was offered and read in evidence and marked Plaintiff's Exhibit 2:

PLAINTIFF'S EXHIBIT No. 2.

LETTER-HEAD OF THE A. MARTINELLI
COMPANY.

Inverness, Marin Co., Calif.

Oct. 1-1925. [28]

I, the undersigned, W. T. Hall, agree to pay for the benefit of the creditors of Mr. Wm. Bartholomew the net sum of \$2,800.00 out of the sale of all

(Testimony of William Bartholomew.)

the personal property on the N. Ranch. Pt. Reyes, Calif—

W. T. HALL.

I agree to sell all of my personal property to Mr. W. T. Hall for the net sum of (\$2,800) Twenty-eight Hundred Dollars.

WM. BARTHOLOMEW.

Q. To whom did Hall deliver to the \$2,800?

A. They had a meeting of the creditors in Point Reyes a couple of days later.

Q. The question was, who did he hand over the \$2,800 to? A. I don't know.

A. It did not pass into your hands?

A. No, I never saw anything of it.

Q. At this time you were insolvent, were you not—you owed a good deal more than you could pay? A. Yes, sir.

Thereupon the following document was offered and read in evidence marked Plaintiff's Exhibit 3:

PLAINTIFF'S EXHIBIT No. 3.

LETTER-HEAD OF THE A. MARTINELLI COMPANY.

Inverness, Marin Co., Calif.

Oct. 1, 1925.

I, Wm. Bartholomew, elect L. C. Eastman as trustee, for the purpose of paying my creditors *pro rata* to the extent of \$2,800 which is to be turned over to L. C. Eastman by Wm. T. Hall in

(Testimony of William Bartholomew.)

payment for my personal belongings on the N. Ranch, consisting in part of the following:

27 Hogs

9 Horses

1 separator

2 gas engines

1 Ford auto

Milking machines

Wagons, Harness, circle saw, and other miscellaneous tools and implements on the N. Ranch.

WM. BARTHOLOMEW. [29]

WITNESS.—(Continuing.) I signed Plaintiff's Exhibit 3. Mr. Eastman asked me to sign it and I signed it. Mr. Hall wanted to know what stuff was on the ranch and if the stuff was still there. That is why it was fixed up this way. He wanted to know if the stuff was on the ranch and if I would sign a paper to the effect that it was on the ranch, and I said I would. I understood when I was signing that Exhibit 3 that I was making Mr. Eastman trustee for the benefit of my creditors. I don't remember what conversation passed at that time, it is over a year ago now.

About two days later, there was a meeting of creditors in Point Reyes. Mr. Gwynn of Petaluma, Mr. Tomasini of Petaluma, Mr. Scillachi and Mr. Grandi of Point Reyes, Mr. Martinelli of Inverness and Mr. Eastman were there. Mr. Eastman was representing the defendant at this meeting. The only thing I remember that was said about this transaction in the presence of Mr. Eastman was

(Testimony of William Bartholomew.)

that the creditors asked Mr. Eastman about the \$300 that he took off for the price of the calves, and Mr. Eastman said he did not know anything about it. Mr. Gwynn got up and told him he did know all about it because he had got the money already. It was said that I owed \$1,400 and some dollars for back rent. That is about all I remember about it. Mr. Eastman at that time was still acting as trustee for the benefit of my creditors. That is about the only time I knew he acted.

There was a meeting in Petaluma afterwards. Mr. Eastman was not present. At the meeting with Mr. Eastman and Mr. Hall when Mr. Hall turned over to Mr. Eastman a check, I thought that check was for the \$1,700. Mr. Eastman told Mr. Hall, and of course I knew myself, that before any one could take over the ranch they had to pay that back rent of mine and that \$300 for calves which they say that I either lost or stole. [30]

Cross-examination.

I stated that I sold the ranch to Hall for \$6,500. There was no written bill of sale passed between us to that effect. Mr. Hall came to my place and wanted to know if I wanted to sell the place, and I told him I did. He wanted to know what I wanted for the ranch and I told him that I wanted \$6,500. He asked me what I paid for the ranch and I told him I paid \$6,250 and I spent about \$2,500 for stuff I put on the place. Mr. Hall did not say much. He said he would let me know later. He

(Testimony of William Bartholomew.)

came back a day or so later and was satisfied with the place and said he would take it at \$6,500. I told him all right he could have it. That was about two weeks before my lease terminated and I went off there. My lease terminated on September 30, 1926.

Q. What did you propose to sell to Mr. Hall for \$6,500 and what did he propose to buy from you for \$6,500? A. All of the stuff on the ranch.

Q. What do you call all of the stuff on the ranch?

A. He saw all that was on the ranch at that time.

Q. What was the stuff? Describe it generally.

A. There were 9 head of horses, about 50 or 55 head of hogs, 3 milking machines, a wagon, a Ford automobile truck. All of the stuff on the ranch that belonged to me was sold to him for \$6,500.

Q. Was there some hay there?

A. There was a barn full of hay.

Q. Did you sell the hay too for the \$6,500?

A. I didn't sell nothing. I told him he could have the whole place for \$6,500.

Q. The hay included?

A. Of course it was included.

Q. You knew from your lease that you did not own the hay, didn't you?

A. Well, I was not going to take the hay away. It is in the cow-barn and it would have stayed there.
[31]

Q. You knew from your lease that the hay would belong to the company?

(Testimony of William Bartholomew.)

A. The hay would belong to the place if he bought the place.

Q. You could not sell the hay?

A. I did not sell the hay.

Q. And you included in your price of \$6,500 goodwill, did you not?

A. There was no goodwill mentioned at all.

Q. But that is what you understood it to be, that your position there on the ranch was worth something?

A. There was no goodwill mentioned. He bought the place for \$6,500.

Q. But that included the going concern; you were running a dairy business at the time, were you not?

A. Yes.

Q. And you made the figure \$6,500? A. Yes.

Q. He said he would pay it? A. Yes.

Q. Did you ask for a deposit? A. I did.

Q. What did he say to you?

A. He told me Mr. Eastman would not allow putting up a deposit.

Q. Did he tell you why? A. No.

Q. He told you Mr. Eastman said not to pay you any money? A. Yes.

Q. And then that sale, that bargain that you were trying to negotiate with Mr. Hall, fell through at that time; in other words, there was nothing doing so far as you were concerned or so far as he was concerned to carry out the arrangement by which you were to sell what you had there for \$6,500 and he was to pay you that amount; the whole thing fell

(Testimony of William Bartholomew.)

through? A. At the time I sold him the place—

Q. Just answer the question.

A. Just wait until I get through.

Q. No, just answer the question. Mr. Hall told you that [32] Mr. Eastman said not to pay you any money, did he? A. Yes.

Q. And then you did not get any deposit?

A. No.

Q. So that talk fell through, there was nothing else said on that occasion was there? A. No.

Q. In other words, the deal for \$6,500 fell through because he would not pay you a deposit, because Mr. Eastman had said not to pay any money to you, is that right? A. Yes.

Q. And that is what you had in mind when you say you sold the place to Mr. Hall for \$6,500?

A. Yes, I sold the place to Mr. Hall for \$6,500.

Q. You mean as you explained it? A. Yes.

WITNESS.—(Continuing.) I sold 26 head of hogs after I told Mr. Hall that I would not sell out to him. I figured on raising some money and staying there another year. I told Mr. Hall this about three days before the end of the month. It was after the conversation when I asked Mr. Hall for a deposit. After I sold the hogs I told him that he could not buy me out, that I would not sell out to him and that I would try to raise the rent. I sold the 26 head of hogs to James Kehoe for \$313. That sale fell through. Mr. Hall told me that Mr. Eastman stopped the check.

(Testimony of William Bartholomew.)

The first talk about \$4,500 was on the morning after my lease was up. Mr. Hall came out to my place about 8 o'clock in the morning. He said, "Bill, I was talking to Mr. Eastman and he told me to come out and get a pencil and paper and take down the stuff you have on the ranch and offer you whatever we find the stuff is worth." I told him that he would not do anything of the sort. After a while he said, "All the money I can raise is \$4,500." So I didn't know what to say, and I went down and [33] talked it over with Mr. Martinelli, and he told me to let the thing go if I wanted to. That was after my lease expired. It was on October 1st.

The first talk I ever had with Hall about \$4,500, the new price, was on this morning after the lease was up. I sold a set of Fairbanks scales off the ranch besides the hogs. The hogs which I sold and the scales were included in the price of \$6,500. I told Mr. Hall that I would not sell out to him, and I was going to raise some money and pay part of the rent and that was why I sold the hogs. After the check was stopped, I went and took the hogs from James Kehoe and sold them to my brother. The hogs did not come back to the ranch and were not there on October 1st. They were delivered to my brother at Nicasio.

I saw Mr. Eastman the night before my lease expired. I think it was on September 30th. He told me that Mr. Hall was going out the next morning and take possession of the ranch and he told me to

(Testimony of William Bartholomew.)

sell out to Mr. Hall as rapidly as possible. He didn't tell me that I had better close the deal before my lease expired.

TESTIMONY OF A. MARTINELLI, FOR PLAINTIFF.

A. MARTINELLI, called as a witness for the plaintiff, testified as follows:

Direct Examination.

I reside at Inverness, Marin County, California, where I am engaged in a general merchandise business. I have known Mr. Bartholomew, Mr. Eastman of the O. L. Shafter Estate Company, and Mr. Hall for some time. I was a creditor of Mr. Bartholomew during September and October, 1925.

I first heard that Mr. Hall and Mr. Bartholomew were negotiating for the sale of Mr. Bartholomew's property on the "N" [34] Ranch about two or three weeks, or possibly a month, before October 1st. I first talked with Mr. Eastman about it the day before, or about the day this transaction was concluded between Mr. Hall and Mr. Bartholomew and myself. Plaintiff's Exhibit 2 was drawn up by me in the office of my Inverness store. Outside of the signature, the paper is all in my handwriting. Mr. Hall and Mr. Bartholomew were present when I drew it up. Mr. Eastman came in later on after this document was drawn up. Mr. Hall and Mr. Bartholomew were still there. Nothing was said at that time about the price. It had

(Testimony of A. Martinelli.)

all been settled then. As far as I remember, the only conversation when Mr. Eastman was present, was, who was to have charge of the \$2,800.

It was understood between Mr. Hall, Mr. Bartholomew and myself that the whole "net sum of \$2,800," which I wrote in Plaintiff's Exhibit 2, was the amount available for the benefit of the creditors. As far as I can remember this was agreed to by all, and it was simply a question of who should take charge of it for the benefit of the creditors. I wrote "the net sum of \$2,800" because I felt that I wanted to emphasize that that was all that was coming to us, I suppose. It was well understood. Nothing was said about what the total price was after we drew up the papers. Before I drew up the papers they themselves had a difference of a few dollars between 1,700 and some odd, and so I told them to make it \$2,800 even. I suggested to Hall to make it \$2,800 and make it an even sum. Nothing else was said in that conversation about why I should insert in this agreement the net sum of \$2,800.

The COURT.—I think it is apparent from Mr. Bartholomew's testimony, as the record now stands, that \$1,400 was for the [35] back rent and \$300 was for the loss of the calves and that that is the reason the check was drawn for \$2,800.

Thereupon the plaintiff rested.

TESTIMONY OF L. C. EASTMAN, FOR DEFENDANT.

L. C. EASTMAN, called as a witness for the defendant, testified as follows:

Direct Examination.

I reside and have resided in Inverness, Marin County, for five and a half years, during all of which time I have been, and now am, the superintendent of the defendant company.

I know Mr. William T. Hall, who is the present tenant of the "N" Ranch. His tenancy began on October 1, 1925, under a written lease. I recognize the instrument now shown to me together with the signature of Mr. Hall. It was made in my presence at my house. I recognized the other signature as that of Charles W. Slack, vice-president of the defendant company.

The said instrument, which was thereupon offered and read and marked Defendant's Exhibit "A," is in the words and figures following:

DEFENDANT'S EXHIBIT "A."

THIS INDENTURE, made this 1st day of October, 1925, between O. L. Shafter Estate Company, a corporation (hereinafter called the "Owner"), the party of the first part, and William T. Hall (hereinafter called the "Renter"), the party of the second part,

WITNESSETH:

That the Owner, for and in consideration of the

rents to be paid and delivered, and the covenants and agreements to be performed by the Renter, as hereinafter provided, and for and in further consideration of the sum of one thousand seven hundred sixty-four and 25/100 dollars (\$1,764.25), paid to the Owner by [36] the Renter, the receipt of which is hereby acknowledged by the Owner, and subject to the payment and delivery of the said rents and the performance of the said covenants and agreements by the Renter, and on the condition that the said rents shall be paid and delivered and that each and all of the said covenants and agreements shall be fully and duly performed by the Renter, has leased, demised and let, and by these presents does lease, demise and let, unto the Renter, that certain portion of the so-called Point Reyes Ranch, belonging to the Owner, situated in the County of Marin, State of California, known as the "N" Ranch, together with one hundred and seventeen (117) cows, more or less, and twenty-two (22) yearling heifers, more or less, for the term commencing on the 1st day of October, 1925, and ending on the 30th day of September, 1926, at and for the rent of two thousand and two hundred dollars (\$2,200) payable, and to be paid by the Renter to the Owner, in lawful money of the United States, in equal installments of five hundred and fifty dollars (\$550), respectively on or before the 31st day of December, 1925, on or before the 31st day of March, 1926, on or before the 30th day of June, 1926, and on or before the 1st day of September, 1926, and at and for the further rent

of twenty-six (26) of the best heifer calves, or, at the election of the Owner, an equal or less number of the best bull calves in substitution therefor, calf for calf, from such of the best cows hereby leased as shall come in or freshen at the beginning of the season of 1925-1926, deliverable and to be delivered by the Renter to the Owner either in the main corral in the said premises hereby leased, or at such other place on the said premises, or at such place on the said Point Reyes Ranch, or at the railroad station, at Point Reyes, as may be designated by the Owner, and at such time or times as may be requested of the Renter by the Owner. [37]

The parties hereto hereby covenant and agree as follows: [38]

12. The Terms of this lease and the covenants and agreements hereof shall bind and enure to the benefit of, as the case may be, the successors and assigns of the Owner and the assigns of the Renter; but nothing contained in this lease shall be deemed to permit the assignment of this lease or of the estate hereby created, or of any interest therein, of the Renter, whether voluntary or involuntary, without the consent in writing of the Owner first had and obtained. [44]

IN WITNESS WHEREOF, The Owner, the party of the first part, has hereunto, and to a duplicate hereof, caused its corporate name to be subscribed and its corporate seal to be affixed by its proper officer thereunto duly authorized, and the

(Testimony of L. C. Eastman.)

Renter, the party of the second part, has hereunto, and to the said duplicate hereof, set his hand and seal, the day and year first hereinabove written.

O. L. SHAFTER ESTATE COMPANY.

By CHARLES W. SLACK, (Corporate Seal),
Vice-President.

WILLIAM T. HALL. (Seal) [45]

WITNESS.—(Continuing.) The lease was executed in duplicate by Mr. Hall. I negotiated this lease, under the instructions of Judge Slack, on October 1st. When the lease was signed, I received \$1,764.25 from Mr. Hall, by check, payable to the order of the defendant. This payment was made as a consideration for his obtaining the lease, and was based on the \$1,464.25, which was still due from Bartholomew, and \$300 based on the fact that the rental of the ranch had to be reduced from \$2,500 to \$2,200, and the run-down condition of the ranch. The normal cash rental of the ranch was \$2,500, but Hall would only pay us \$2,200. That made a difference of \$300. I came to an understanding with Hall, which was approved by Judge Slack, before October 1st, as to the terms on which he could have the ranch, and Mr. Hall, at that time, had offered to the company, through me, \$2,200 cash rent. I told Hall he could have the lease on October 1st, but he would have to pay the company \$1,764.25. It was not certain that the company could deliver possession of the ranch to the new

(Testimony of L. C. Eastman.)

tenant on October 1st. I did not know whether Bartholomew would give up possession on October 1st. I told Hall that if he did not give up possession, we would force him to leave. I had talked with Bartholomew a number of times before the month of September, concerning the obtaining of a new tenant when his lease expired. In the first part of 1925, Bartholomew asked me to try and obtain a tenant for him.

I was present at a conversation between Judge Slack and Bartholomew in the latter part of June, 1925, at which the question of Bartholomew's selling out came up. We met Bartholomew on the county road, between the "N" Ranch and Inverness, near the ranch gate. Judge Slack and I were present. Judge Slack told Bartholomew that he did not seem to be getting along very well on the ranch, and things were becoming so run-down and in such a shape that he would have to get off; that he, Judge Slack, could [46] not stand it any longer. He told Bartholomew to look for a buyer, or a new tenant. Judge Slack discussed the subject of about 25 head of heifers that had been lost on the ranch, and inquired into it. Bartholomew told Judge Slack that they had disappeared and that they could not be found. I had made a search for those heifers but had never found any of them. Judge Slack and I were bound for the "N" Ranch when we met Bartholomew. Bartholomew said that he would look for a new tenant.

(Testimony of L. C. Eastman.)

After the conversation, Judge Slack and I went out to the "N" Ranch, and Bartholomew went on his way to Point Reyes. When Judge Slack and I came out to the ranch, we looked around the buildings, and, as a result of our visit, I proceeded to make repairs, and probably a week or two later I had a man on the ranch to do some painting and repairing of the fences and gates and cleaning up in general. I could get Bartholomew to do very little in the way of repairs or cleaning up of the property.

I recall that Judge Slack left the state about the 12th or 14th of September, and returned on September 28th. During that time, Hall called upon me with reference to leasing the ranch. He first called about September 17th, and asked me, if he bought out Bartholomew, would he have a lease on the "N" Ranch. I told him that Judge Slack was in the East and that I would take it up with him as soon as he returned. I did not, at that time, say anything to Hall about what he or any one else who took a new lease of the ranch would have to pay as a consideration for the lease.

After Judge Slack returned, I told Hall that he could have the lease on October 1st, by paying the defendant \$1,700. The day the lease was to expire, Hall told me that the ranch was in such condition that he felt that all he would be willing to pay would be \$2,200, instead of the regular rent of \$2,500. I told him that I would take the matter up with Judge [47] Slack, and I did so. As a re-

(Testimony of L. C. Eastman:)

sult of my conversation with Judge Slack, I told Hall that he could have the ranch for a rental of \$2,200 by paying \$1,700, or a little over, as consideration for the new lease to him, that is, if the company obtained possession from Bartholomew after that lease had expired. I told Hall not to pay Bartholomew any money, that he was very heavily in debt, and that any money that he would get from the sale of his equipment would have to go to the creditors. I told Bartholomew the same thing. My arrangement with Hall as to the new lease was confirmed by Judge Slack.

During the month of September, I told Bartholomew that he must do his best to find a new tenant before the lease expired. My last conversation with him of that sort was on the night of September 30. On that occasion I asked Bartholomew if he had sold, or had made any deal, or if he settled any deal for selling out the ranch to Hall. He said he had not. I advised him to go that night and come to some terms of settlement with Hall while he still had a lease on the place, because the next day his lease would be expired and I told him that, if I were in his place, I would certainly go that night and come to the best terms possible.

I next saw Bartholomew on the following morning, October 1st, at my house. Hall was also there. Hall came just before Bartholomew. On that occasion this lease, Defendant's Exhibit "A," was signed. Hall read it over before he signed it. I particularly called his attention to the provisions

(Testimony of L. C. Eastman.)

on the first page that he should pay the defendant \$1,764.25 as a consideration for the lease. I received the lease that morning from Judge Slack before Hall and Bartholomew arrived at my house. Hall gave me the check for \$1,764.25. Bartholomew was present at the time. Before I asked Hall to sign the lease, I asked Bartholomew if he was [48] ready to leave the ranch. He said he was, that all he had to do was to go out and get his suitcase and he was going that afternoon. I then asked Hall if he wanted to take the lease. Hall and Bartholomew had some discussion about the purchase by Hall of the remainder of Bartholomew's personal property on the ranch. Hall told Bartholomew that he was not going to give him—I think he mentioned \$4,500, or something of that sort. He said he was asking too much for the ranch, and that he was not going to give him as much as he asked for it. Hall said that he would not pay altogether more than \$4,500. He did not say anything about the amount he paid the defendant. That is all the conversation I recall.

On that occasion, at my residence, Hall and Bartholomew left my house to discuss the selling price further. They were discussing it as they left the house and went over towards Martinelli's store, which is about one hundred yards distance from my residence. I drove over to the store shortly after Bartholomew and Hall left my house, and they were talking with Martinelli out in the road. Then they came over to me, and Mr. Martinelli told me that

(Testimony of L. C. Eastman.)

they had come to terms, that Hall was giving Bartholomew \$2,800. He said, "Let us all go in the office and we will make up some paper to have the bargain in writing." So we all went into Mr. Martinelli's office. At that time, I believe, Mr. Martinelli wrote out a paper which is an exhibit here, and I wrote out another one. It is my recollection that Mr. Martinelli wrote out what we call Plaintiff's Exhibit 2 while I was there, and that it was signed by Hall and Bartholomew while I was there. Plaintiff's Exhibit 3 was written out by me and signed by Mr. Bartholomew.

I instructed Hall not to pay over any money to Bartholomew, for the reason that he owed all the local merchants quite a bit [49] of money, and I was instructed by Judge Slack to protect those creditors by having Hall pay the money either to myself, or to one of the creditors, to be held for all of the creditors. Mr. Martinelli, I believe, asked Bartholomew if it would not be all right to have Hall pay the money over to me for the benefit of the creditors, and Bartholomew said that it would be all right, so then I made out this paper, Plaintiff's Exhibit 3. I did not get the \$2,800 at that time, because Hall said he did not have the money then, but that he would pay it on the following Wednesday. The \$2,800 was never paid to me.

There was a meeting of creditors at Point Reyes Station a short distance from Inverness, the next day, October 2d. A number of the principal creditors attended, including Mr. Gwynn, representing

(Testimony of L. C. Eastman.)

the Mercantile Trust Company, the Petaluma branch, Mr. Grandi, Mr. Martinelli, br. Scillachi, Mr. Bartholomew and Mr. Hall. The creditors said that I was to receive the money from Hall a few days later. One of the creditors said they thought it would be better for Mr. Gwynn to handle the money instead of myself, because Mr. Gwynn was the largest creditor, and it was agreed to by all the rest of the creditors that Mr. Gwynn should have it. Neither Bartholomew nor Hall made any objection to that.

Q. Was anything said about the value of the remaining property at that meeting, the value of the remaining property on the ranch which had been sold or agreed to be sold by Bartholomew to Hall for \$2,800, and if so, what was it?

Mr. HUNT.—That is objected to as immaterial, irrelevant and incompetent because it relates to a time when the transaction was completed and they were waiting for the money to be paid over. [50]

Mr. SLACK.—I think not, your Honor. All the parties were present on that occasion. I propose to show there was some question about the value of the equipment, in other words, whether Hall had paid too little or too much.

The COURT.—Objection sustained.

Mr. SLACK.—The purpose of that is to show that Mr. Hall had offered the creditors, if they were dissatisfied, to take the property off his hands at \$2,000 and that he would stand a loss of \$800.

(Testimony of L. C. Eastman.)

The COURT.—That would be a mere expression of opinion.

Mr. SLACK.—Very well, your Honor. You may take the witness.

Cross-examination.

At one time during my talk with Hall, I told him he must pay \$1,700 to get the lease. I told Hall that Judge Slack would give him the lease provided that he would pay to the Shafter Estate Company \$1,700, that that was on account of a little over \$1,400 that Bartholomew owed us for back rent. I think that is all the explanation I gave Hall. No consideration was required for the lease which I made with Bartholomew, which expired on October 1st.

On October 1st, in the morning, Hall and Bartholomew and I met at my house. The lease, which I had at my house at that time, was signed by Hall and he gave me a check for \$1,764.25. As they left my house, Hall and Bartholomew were discussing the price at which Bartholomew would sell to Hall the equipment that he, Bartholomew owned. Hall said that he would give Bartholomew what he was asking—I have forgotten just how he mentioned the price, or just what the price was. [51]

Q. Is it not a fact that what was said was this: Bartholomew was asking \$5,500 and Hall said he would not give more than \$4,500.

A. That may have been it.

(Testimony of L. C. Eastman.)

Q. To the best of your recollection, is not that what was said?

A. I don't remember anything about the \$6,500 and I could not say as to the \$4,500. I know that Mr. Hall would not give the price that Mr. Bartholomew was asking or what was discussed some time before.

WITNESS.—(Continuing.) I only attended the first meeting of the creditors on behalf of the Shafter Estate. At that meeting I may possibly have said that the defendant would have a claim for rent \$1,400, which would have to be paid *pro rata* out of the \$2,800. I am not positive that I said that. I have a faint recollection of saying it however. We did not make any claim to the creditors on this fund. I may have said that we had the power to make a claim, or indicated that we had the power to make a claim for \$1,400, if we wanted to, but I did not make any claim, or put in any claim for the \$1,400. I had no intention of putting in any claim. I don't know what Judge Slack's feeling was in the matter.

TESTIMONY OF WILLIAM T. HALL, FOR DEFENDANT.

WILLIAM T. HALL, called as a witness for the defendant testified as follows:

Direct Examination.

I am the tenant of the "N" Ranch, owned by the defendant, under a lease signed October 1, 1925, I

(Testimony of William T. Hall.)

formerly resided at Point Reyes Station, a few miles from Inverness. The first talk I had with Bartholomew about getting a tenant, or becoming a tenant of the "N" Ranch, was in the early part of September. He told me the ranch was for sale, and if I knew of a buyer to send one out. Soon afterwards I made an investigation to see [52] whether or not I could lease the property. In his first talk with me Bartholomew said the ranch was worth about \$6,500. When I thought about trying to get a lease on the ranch, I went out to look at the property. On that occasion, in my talk with Bartholomew, I asked him if I could buy him out by assuming a large part of his debts. He said he owed the bank, at Petaluma, \$3,000, or \$3,100, and the Grandi Company \$2,200. He mentioned no other debts on that occasion. We made a trip to Petaluma to the bank, and that seemed satisfactory. I would assume this large indebtedness of about \$5,300 and put up the small amount of cash that I had. I saw Mr. Gwynn, the manager of the bank in Petaluma, and it seemed to be satisfactory at that time. Bartholomew and I just talked over the proposition, and it seemed to be fair until I found out that there were other creditors to whom he owed a considerable amount of money. The deal just seemed to blow up then; there was nothing more about the \$6,500. I asked him to make a cash proposition and he said that he could not sell, that he could not make one. Later on I made another trip out there when I was told that he had to leave, and I asked him if

(Testimony of William T. Hall.)

we could not agree on a cash price somewhat cheaper. There was no agreement at all. He did not make a cash proposition to me.

Mr. Eastman told me not to pay any money to Bartholomew. I told Bartholomew that. After that conversation Bartholomew sold the best part of the hogs, and a Fairbanks scale, that I knew of, out of the property that was included in the equipment that he offered to me for \$6,500. I asked Mr. Eastman whether or not, if I agreed with Bartholomew to buy him out, I would be accepted by the company as a tenant. It seemed to be all right, but he spoke about referring the matter to Judge Slack. [53] I took the matter with Mr. Eastman again, in the latter part of September, 1925. About the terms of the lease, I offered \$2,200 a year, instead of the \$2,500 which Bartholomew had paid. Mr. Eastman told me that there was a claim of \$1,700 odd before the ranch would be leased again. He said I would have to pay it, or whoever took the ranch would have to pay this money in order to get a new lease. I knew that Bartholomew's lease was to expire on September 30, 1925. Mr. Eastman told me I could have the ranch on September 30th, on those terms if Bartholomew left.

I saw Bartholomew the next morning, after his lease had expired. I went out to his ranch and saw him there. It was understood that I was to have the ranch, and his lease had expired, and we were to go to Mr. Eastman to prepare for the sign-

(Testimony of William T. Hall.)

ing of a new lease. Bartholomew did not seem very much interested in how much he got—it was to go to the creditors. I told him that \$4,500 was as much as I would be willing to pay out on the deal. I knew I had to pay \$1,764.25 to the defendant to get the lease, and all I wanted to pay out on the deal was \$4,500; I told Bartholomew that I did not come to any understanding as to how much I was to pay before Bartholomew and I went to Eastman's residence that morning. While I was at the ranch, Bartholomew told me all he had to get was his suitcase. I signed the lease on October 1st, when Bartholomew and I went to Eastman's residence.

Up to the time when I signed the lease, I had reached no conclusion with Bartholomew as to whether or not I would take the remainder of his property, or what price I would pay for it. I recall a conversation with Bartholomew after the sale of the hogs and other property, at which he told me to *to* wait a couple of weeks and get the property cheaper. [54]

Q. I think you testified, Mr. Hall, that you and Bartholomew had some talk, either before or after the lease was signed on October 1st, about submitting the proposition of how much should be paid to Bartholomew if you bought the property. You did have such a talk with him, did you?

A. At the time of signing the lease we tried to agree and settle it right there but when we saw that we could not agree and it was time to take the

(Testimony of William T. Hall.)

lease we agreed that I sign the lease and square with the company and then if we could not agree we would appear before the creditors and sort of let the creditors decide the price that I should pay.

WITNESS.—(Continuing.) After my lease had been signed and Bartholomew had allowed his lease to expire, I knew that Bartholomew had no goodwill to sell, and that there was nothing left for Bartholomew to sell except what remained of his personal property on the ranch.

I went with Bartholomew to Martinelli's store after I signed the lease and had handed the check over to Mr. Eastman. That check was payable to the order of the defendant for the amount specified as a consideration for the lease. I handed the lease in duplicate back to Mr. Eastman to be executed by the defendant. Perhaps a week or ten days later, I got from Mr. Eastman my copy of the lease executed by the defendant. It might have been earlier than that. I have with me my copy of the lease which I received from Mr. Eastman. It has been in my possession ever since Mr. Eastman gave it to me.

When I arrived at Martinelli's store, which is only a short distance from Mr. Eastman's residence, Bartholomew and I talked further about the personal property that was left on the ranch belonging to Bartholomew. The difference between \$4,500 and what I had to pay the defendant, \$1,764.25, amounted to \$2,700 odd, something less than \$2,800.

(Testimony of William T. Hall.)

Mr. Martinelli took [55] a hand in the discussion about that time. He asked me if I would not make it \$2,800, to make it round numbers. I told Mr. Martinelli that I would do so, and then he drew up the bill of sale. Mr. Eastman came in just as we were writing out the bill of sale.

Q. Was there any talk then at which you were present, between Bartholomew, Martinelli and Eastman as to who should take the \$2,800 which you agreed to pay for the property which was left on the ranch and agreed to be sold to you by Bartholomew.

A. It was agreed between all of us that Mr. Eastman would act as trustee.

WITNESS.—(Continuing.) That was satisfactory to everyone there. There was some suggestion that Martinelli should hold the \$2,800 as trustee, and Mr. Martinelli asked Mr. Eastman if he would not do it on account of Mr. Martinelli being a creditor. Bartholomew consented to that. I recall the writing out of the other paper Plaintiff's Exhibit 3. Bartholomew signed both papers in my presence and agreed to them.

I was present at the meeting of the creditors the next day at Point Reyes. Bartholomew and Eastman were also present.

Q. Do you recall any discussion among the creditors about the price which you agreed to pay for the property which was left on the ranch by Bartholomew and that Bartholomew agreed to sell you?

(Testimony of William T. Hall.)

A. They seemed to think the \$2,800 was not enough for the old equipment.

WITNESS.—(Continuing.) Mr. Eastman stated at the time that the goodwill had been lost and that Bartholomew had nothing but some personal property there, horses and so forth. [56]

I had not, up to that time, paid the \$2,800 to anybody. It was agreed at that meeting of the creditors that Mr. Gwynn, of the bank would take charge of the money. Neither Bartholomew nor I raised any objection to that. I accordingly secured the money and it was paid over to Gwynn.

Q. Mr. Hall, the \$1,764.25 came from your own

A. Yes, sir.

money, it was your own money, was it not?

Mr. SLACK.—You may cross-examine.

Mr. HUNT.—No questions.

TESTIMONY OF CHARLES W. SLACK, FOR DEFENDANT.

CHARLES W. SLACK, called as witness for the defendant, testified as follows:

Direct Examination.

I am an attorney at law, residing in San Francisco. I am the vice-president and general manager of the defendant company, and have been such since 1917. Before that time, I was attorney for the company and looked after its legal affairs. The execution of leases by the company is in my immediate charge.

(Testimony of Charles W. Slack.)

It has always been a custom of the company to make leases for the term of one year, and these have been renewed from time to time, if the tenants are satisfactory. The tenants have usually been satisfactory, and leases have been renewed from time to time. We have had some tenants there as long as 17 years; others, to my knowledge, have been there for 8 or 10 years. Where satisfactory, and tenants have desired to assign their leases, it has been the custom of the company never to interfere except to try to keep a check on the price for the goodwill not being excessive. We have accepted the tenants generally if they were satisfactory to us and to the outgoing tenants, and have permitted the two parties to make arrangements as to the price. We have had three instances during my management, including Bartholomew, where the tenants were not satisfactory. In the other two cases, we took over and operated the ranches ourselves at the termination of the tenancy, refusing to give the [57] tenants new leases. They were told that beforehand in each case. These other tenants, as in the case of Bartholomew were given ample opportunity, and considerable urging, to obtain satisfactory tenants in their stead; not having done so, we were obliged to make our own arrangements.

I had some acquaintance with Bartholomew about 1920, 1921, perhaps 1922, somewhere along there. Previous to the lease from October, 1924, to September 30, 1925, he had a lease of the same property, that is the ranch and the cattle then on the property,

(Testimony of Charles W. Slack.)

in conjunction with another tenant. There was a lease in 1922 to Bartholomew and a man by the name of Rainey. At the expiration of that lease, Rainey, so they told us, sold out to Bartholomew, and another lease was made to Bartholomew that lasted for another year, and then the lease in question about September, 1924, to Bartholomew again alone for another year.

The lease to Hall, dated October 1, 1925, was prepared by me. It was negotiated by Mr. Eastman, the superintendent of the properties. I fixed the amount of the consideration named in the lease on the basis of \$1,464.25, the back rent, which we have been unable to collect from Bartholomew, and the \$300 difference between that sum and the amount specified in the lease as a consideration, was due to the fact that the normal cash rent of the property was and had been for some time \$2500 a year. Hall, by reason of the run-down condition of the property and the loss—missing—of a whole herd of stock, besides other stock, refused to pay more than \$2,200. That established, for the time being and for some time in the future, the cash rent of \$2,200. Consequently, the difference for one year, to wit, \$300, was added on, by my insistence, to the cash consideration which Hall or anybody else would have to pay for getting the lease. [58]

In making these leases we always require the tenant to raise and deliver to us a minimum of heifer calves, or, at our option, bull calves, as specified in the lease. That is a part of our consideration, that

(Testimony of Charles W. Slack.)

they must deliver at the end of the year that number absolutely, the purpose of this being to maintain the herd of dairy cattle. In 1925, in the spring, there were, if I remember correctly, 23 yearling heifers leased to Bartholomew. They were yearlings which would become two year olds the following fall, that is, at about the expiration his lease. They disappeared absolutely, the whole herd, and that was one of the reasons for my dissatisfaction with Bartholomew. Other reasons were the neglect and loss of other cattle, our inability to get Bartholomew to make repairs, keep up the fences, keep up the road leading into his premises, and the general run-down condition of the property. As a result, the rest of the stock was in a poor condition, due to improper care, during the winter.

I first conversed with Bartholomew about getting off at the end of his term shortly after my return from the east. I was east on business twice during 1925, the first time from about March 10th to the latter part of April. I made two visits to the ranch properties, including that ranch, shortly after my return; one, according to memoranda which I have, on May 2d. I did not see Bartholomew, although I called at the "N" Ranch with Eastman to see him. He was not there. I visited the ranch again with Eastman on June 20th. There are seven ranches in that group. Our first objective point was the "N" Ranch. We met Bartholomew on the road on his way to Iverness. I told him that the ranch was in a bad condition, out of repair, stock in poor con-

(Testimony of Charles W. Slack.)

dition. I had seen them a month before. I told him that it was a singular thing, the missing of the whole herd of yearling heifers, that we could find no trace of them. We had searched for them. I don't know whether I told him at that time that we had searched for them. I told [59] him that he would have to look out for another tenant, that this thing could not go on, that he was behind in his rent and that he must sell out. Thereafter, on that same day, Mr. Eastman and I drove on to the ranch. I then ordered certain improvements to be made for the prospective new tenant, substantially as they have been described by Mr. Eastman in his testimony.

I went east again in September. I did not visit the ranch again, because we were engaged in a water hearing in Sacramento that took up our time. I went east on September 10th, to Washington, to attend a hearing before the Power Commission, and returned on September 28, 1925. I was first informed by Mr. Eastman with reference to the negotiations between Bartholomew and Hall on September 28th, immediately after my return, when I rang Eastman up on the telephone. I fixed, first, the amount of the back rent as the basis for a consideration of giving a lease to Hall or anybody else. Later on when Hall offered the \$2,200, then \$300 was added by me to the amount which was then fixed and known for Bartholomew's unpaid rent, making all told \$1,764.25. That was the price fixed

(Testimony of Charles W. Slack.)

for the obtaining of a lease by Hall or anybody else at that time.

I prepared this lease upon the receipt of advice from Mr. Eastman that Hall had agreed to it. I received that advice on September 30th, prepared the lease that day and sent it to Mr. Eastman, so that he would have it on the morning of October 1st. I would not have leased that property to anybody else at any lesser price.

My reason for instructing Mr. Eastman not to permit any money to be paid directly to Bartholomew, was, that I believed that if any money was paid to Bartholomew, the creditors would not receive a cent of it. Consequently, I made that as a condition to the purchase by anyone of what Bartholomew had to sell, that the money had to be paid to someone as a trustee for the creditors, or Bartholomew had to take his property off the ranch. I did not attempt to control any sale that he might make after he took the property off the ranch. [60]

That was not our affair, nor did I attempt to control the price which Hall was willing to pay and Bartholomew was willing to take for what he had left. That was no concern of ours, except that I hoped that it would be as good a price as possible.

I had known the Grandi Mercantile Company, Mr. Martinelli and Mr. Scillachi for many years. They deal with us and we deal with them. We had had satisfactory business arrangements with all of them. They are local merchants with whom we and our tenants have business, and it was my desire

(Testimony of Charles W. Slack.)

to protect them in any sale that I could possibly have anything to say about.

I never in any way consented to any holding over by Bartholomew after September 30, 1925. He was told to look out for another tenant. Mr. Eastman was told to help him all he could to get another tenant, and he knew perfectly well from what I have told him that he would have to quit after the 30th, because he could not get a new lease, and we would run the ranch ourselves if we could not get a new tenant.

There was no relationship existing between Bartholomew and the defendant, or any obligation, legal or moral, from the defendant to Bartholomew, after midnight on September 30, 1925. We considered that Mr. Bartholomew by his conduct, had forfeited all consideration that we might otherwise show him. There was nothing coming to him from the O. L. Shafter Estate Company that he could sell. The goodwill was gone when his lease expired. He could have sold the goodwill before that if he and Hall had agreed on the price.

I was familiar, in a general way, with the property that was on the ranch. It would have a great deal more value on the ranch than if removed therefrom. I should say that 50 per cent of the value was in the retention of the property on the ranch, as against the removal of the property from the ranch. The property outside the livestock, the horses and the hogs, would have practically no value, nor more than 50 per cent, off the ranch.

(Testimony of Charles W. Slack.)

[61] It had a value in place because the tenant could come in and use it there, and therefore it had a larger value in place than it would have off the ranch.

I was advised of the conclusion of the negotiations between Eastman and Hall on September 30th. The lease was accordingly prepared, as produced here, with one small exception, and was sent to Mr. Eastman, and is the lease which was executed here with a change, that we discovered had to be made later on, in the number of some cattle. That is indicated upon one of the originals, changing *the of* yearlings from 22 to 26. On October 1st, I was advised by Mr. Eastman by telephone that the lease had been signed that morning. Thereafter, the lease executed in duplicate by Hall was sent to me and was executed by me for the company, and Hall's copy was returned to him and the other retained by me for my files.

Cross-examination.

We never, in any other instance, exacted any cash consideration for a lease, because a case of this kind never arose before. The rent had always been paid, even in the other two cases I have mentioned, where tenants were told that when their lease expired, they could not have a renewal. The schedules in bankruptcy show that the debts of Bartholomew, including our own claim, amounted to about \$9,000.

(Testimony of Charles W. Slack.)

After October 1st, I talked to a number of the principal creditors at Inverness and several of those at Petaluma about the position of the defendant and its rent claim against Bartholomew. I said to those to whom I talked, there were threats of bankruptcy proceedings at that time—and I said that, after all the trouble we had been put to to save the \$2,800 for the creditors, if they, through proceedings in bankruptcy, put uh to any trouble and expense we would reserve the right to file a claim in bankruptcy. Up to that time, before I heard of the bankruptcy [62] proceedings, it was my individual intention to waive the claim of the company for back rent and let the other creditors have the benefit of the money, but, since they were using the \$2,800 for the purpose of trying to get more money from us, we would reserve the right to put in the claim of the defendant against the assets.

Thereupon the defendant rested.

TESTIMONY OF WILLIAM BARTHOLOMEW,
FOR PLAINTIFF (RECALLED IN RE-
BUTTAL).

WILLIAM BARTHOLOMEW, recalled as a witness for the plaintiff in rebuttal, testified as follows:

Direct Examination.

On the morning of October 1st, in the conversation between Hall and Eastman and myself, at Eastman's residence, Eastman said the \$300 was for the calves that were supposed to be lost. There were

(Testimony of William Bartholomew.)

20 head of calves lost during the 1924 storm upon the hill and they were found dead by hunters up there on the hill. The company charged Hall up with \$300 for those calves.

Cross-examination.

I made some search for those missing cattle and I told Judge Slack that I could not find them living or dead. Afterwards, I did find some of them dead before I left the ranch. I never told Judge Slack that I found them dead. I never saw him. I never saw him for a month or so. Mr. Kehoe was after the cattle a whole week and he could not find them living or dead. I afterwards found some of them dead. Myself and some of the hunters up on the ranch found some of the cattle dead in the brush. One hunter told me that he saw several cattle lying in the brush dead.

Thereupon the cause was argued to the Court by counsel.

The COURT.—I think the evidence clearly shows that there was no intentional wrong on the part of the defendant, but that the effect of the transfer was to create the preference and thus causing a diminution of the bankrupt's estate. The testimony of Mr. Bartholomew shows he agreed to sell to Mr. Hall for [63] \$6,500.00 That was before October 1st, 1925. Bartholomew said Hall told him that he went to see Mr. Eastman and that Mr. Eastman told him not to pay any money to him, Bartholomew. Shortly thereafter Hall offers Bartholo-

mew only \$4,500.00. Bartholomew says that Mr. Eastman said that before anyone could take over the ranch he had to pay the \$300.00 for the calves, lost or stolen, and the sum of \$1,400.00 back rent. He further stated that Mr. Eastman said that he, Bartholomew, had better sell to Mr. Hall for the \$4,500.00. Mr. Eastman does not deny that. As a matter of fact, he says in his testimony in substance, that he did tell Hall not to pay Bartholomew any money, that he was in debt; he says that he advised Bartholomew to come to the best terms possible. Mr. Hall says that Mr. Eastman told him that he would have to pay back rent before he could get the lease. Mr. Hall further stated, if I remember correctly, that he told Mr. Bartholomew that \$4,500.00 was all he would pay on the deal. Considering all the facts, I think plaintiff is entitled to judgment.

Mr. ZOOK.—May I ask if your Honor finds that the \$300.00 was Mr. Bartholomew's money?

The COURT.—Whose money was it if it was not his?

Thereupon on motion of the defendant, and the plaintiff consenting thereto, it was agreed that findings be prepared by the parties and submitted to the Court.

Thereafter, and on September 10, 1926, the defendant formally moved that the Court enter judgment in favor of the defendant upon the following grounds:

1. That no evidence sufficient to warrant a judgment in favor of the plaintiff has been introduced upon the trial.

2. That the evidence shows without contradiction: [64]

(a) That neither the bankrupt Bartholomew, nor anyone acting for or on his behalf, or at his direction, transferred to the defendant at any time any property of the bankrupt.

(b) That the money paid by the witness Hall to the defendant was the sole and exclusive property of Hall, and that the bankrupt had no right, title or interest therein.

(c) That the estate of the bankrupt was in no wise diminished by the payment by Hall to the defendant.

(d) That the payment by Hall to the defendant in no manner effected a preference in favor of the defendant.

(e) That the payment by Hall to the defendant did not operate, nor was it intended by either Hall or defendant, to operate as a discharge of any obligation of the bankrupt to the defendant.

Thereupon, the Court denied the said motion, to which ruling the defendant then and there duly excepted.

EXCEPTION No. 1.

The plaintiff thereafter submitted to the Court his proposed findings of fact and conclusions of law, in the form subsequently signed by the Court and incorporated in the judgment-roll herein. The defendant, within the time allowed by law, served on the plaintiff and presented to the Court its proposed amendments to the said proposed findings of fact and conclusions of law, and thereafter the

Court rejected each and all of the said proposed amendments, and signed and entered the said findings of fact and conclusions of law now incorporated in the said judgment-roll, and ordered judgment entered thereon.

To the rejection of the said proposed amendments, and of each of them, the defendant then and there duly excepted. [65]

EXCEPTION No. 2.

The said proposed amendments to the said proposed findings of fact and conclusions of law are in the words and figures following, to wit:

(Title of Court and Cause.)

PROPOSED AMENDMENTS TO FINDINGS.

The above-named defendant proposes the following amendments to the findings of fact and conclusions of law proposed by the plaintiff in the above-entitled action:

1. That proposed findings III be amended by striking therefrom the following clause: "Except in so far as the debt of defendant was satisfied as hereinafter mentioned."

2. That proposed findings IV, V and VI be stricken out and that the following finding be made in lieu thereof:

"IV.

That the bankrupt at no time transferred to the defendant, any sum of money whatsoever out of the property of the bankrupt or otherwise; that the

payment by the witness Hall to the defendant of the sum of \$1,764.25 on the 1st day of October, 1925, was made by the said Hall out of funds belonging solely and exclusively to the said Hall, in which the bankrupt had no right, title or interest, and that the estate of the bankrupt was in no manner diminished by the said payment; and that the said payment did not operate, nor was it intended by either Hall or the defendant to operate, as a discharge of any obligation of the bankrupt to the defendant."

4. That the proposed conclusions of law be stricken out, and that the following conclusions of law be made in lieu thereof:

"CONCLUSIONS OF LAW.

The plaintiff is not entitled to recover any judgment against the defendant, and the defendant is entitled to judgment for its costs herein."

September 10, 1926.

Respectfully submitted,

CHARLES W. SLACK and
EDGAR T. ZOOK,

Attorneys for Defendant. [66]

To the signing and entry of the said findings of fact and conclusions of law, the defendant then and there duly excepted.

EXCEPTION No. 3.

And to the entry of judgment in favor of the plaintiff, the defendant then and there duly excepted.

EXCEPTION No. 4.

ASSIGNMENTS OF ERROR.

The defendant now assigns as error to be used upon its writ of error to the said judgment herein, the following, to wit:

ERRORS OF LAW.

1. That the Court erred in denying the motion of the defendant for judgment in its favor, as specified in Exception No. 1.

2. That the Court erred in rejecting the proposed amendments, and each of them, to the proposed findings of fact and conclusions of law of the plaintiff, as specified in Exception No. 2.

3. That the Court erred in signing and entering its said findings of fact and conclusions of law, as specified in Exception No. 3.

4. That the Court erred in entering judgment in favor of the plaintiff, as specified in Exception No. 4.

And now, within the time allowed by law, the defendant presents this, its bill of exceptions, to be used upon writ of error to the said judgment.

Dated, October 5th, 1926.

CHARLES W. SLACK and
EDGAR T. ZOOK,
Attorneys for Defendant. [67]

STIPULATION.

It is hereby stipulated and agreed between the parties to the above-entitled action, by their respective attorneys, that the foregoing bill of exceptions is true and correct, and may be settled, certi-

fied and allowed by the Court, without further engrossment or service thereof upon the attorney for the plaintiff.

Dated, October 5th, 1926.

REUBEN G. HUNT,
Attorney for Plaintiff.
CHARLES W. SLACK and
EDGAR T. ZOOK,
Attorneys for Defendant.

CERTIFICATE OF THE COURT TO BILL OF EXCEPTIONS.

The foregoing bill of exceptions is hereby settled and allowed and certified to be a true bill of exceptions.

Dated, October 5th, 1926.

WM. H. SAWTELLE,
Judge.

[Endorsed]: Filed October 19th, 1926. [68]

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

O. L. Shafter Estate Company, the defendant in the above-entitled action, in connection with its petition for a writ of error, makes the following assignment of errors, which, it avers, occurred upon the trial of the cause, to wit:

1. The Court erred in denying the motion of this defendant that the Court enter judgment in its favor.

2. The Court erred in rejecting the amendments, and each of them, proposed by this defendant to the proposed findings of fact and conclusions of law submitted by the plaintiff herein.

3. The Court erred in signing and entering its findings of fact and conclusions of law in favor of the plaintiff herein.

4. The Court erred in entering judgment in favor of the plaintiff herein.

WHEREFORE, This defendant prays that the judgment of the District Court may be reversed.

CHARLES W. SLACK and
EDGAR T. ZOOK,

Attorneys for Defendant.

[Endorsed]: Filed Oct. 20, 1926. [70]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON WRIT OF ERROR.

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing 76 pages, numbered from 1 to 76 inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error as the same remains on file and of record in the above-entitled case in the office of the Clerk of said Court, and that the same constitutes the return to the annexed writ of error.

I further certify that the costs for the foregoing return to the writ of error is \$31.20, that said amount was paid by the defendant and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said District Court this 3d day of December, 1926.

[Seal] WALTER B. MALING,
Clerk of the District Court of the United States for
the Northern District of California. [77]

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America
to the Honorable, the Judges of the District
Court of the United States for the Northern
District of California, Southern Division,
GREETING:

Because, in the record and proceedings, as also
in the rendition of the judgment of a plea which
is in the said District Court, before you, or some
of you, between O. L. Shafter Estate Company, a
Corporation, plaintiff in error, and W. T. Mooney,
Trustee in Bankruptcy of the Estate of William
Bartholomew, defendant in error, a manifest error
hath happened, to the great damage of the said O.
L. Shafter Estate Company, plaintiff in error, as
by plaintiff's complaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-

tice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the —— day of October, in the year of our Lord one thousand nine hundred and twenty-six.

[Seal] WALTER B. MALING,
Clerk of the United States District Court for the
Northern District of California, Southern Division.

By A. C. Aurich,
Deputy Clerk.

Allowed by

FRANK KERRIGAN,
District Judge. [78]

[Endorsed]: Filed Oct. 20, 1926.

RETURN TO WRIT OF ERROR.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk of the District Court of the United States
for the Northern District of California [79]

[Endorsed]: No. 5019. United States Circuit Court of Appeals for the Ninth Circuit. O. L. Shafter Estate Company, a Corporation, Plaintiff in Error, vs. W. T. Mooney, Trustee in Bankruptcy of the Estate of William Bartholomew, Bankrupt, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed December 4, 1926.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

In the United States Court of Appeals for the
Ninth Circuit.

No. 5019.

O. L. SHAFTER ESTATE COMPANY, a Cor-
poration,

Plaintiff in Error,

vs.

W. T. MOONEY, Trustee in Bankruptcy of the
Estate of WILLIAM BARTHOLOMEW,
Defendant in Error.

STIPULATION AS TO PRINTING OF TRAN-
SCRIPT.

IT IS HEREBY STIPULATED AND
AGREED by and between the parties hereto, by
their respective attorneys, that the following pa-
pers, appearing in the typewritten record herein,
are in proper form, and were filed, issued or made
in due time, and that the same may be omitted
from the printed record herein, namely:

1. The subpoena ad respondendum;
2. Order transferring cause.
3. Certificate of Court to judgment-roll;
4. Petition for writ of error;
5. Order allowing writ of error and fixing amount
of supersedeas bond;
6. Bond on writ of error;
7. Praecipe for record; and
8. Citation on writ of error.

IT IS FURTHER STIPULATED AND AGREED between the parties hereto that the covenants numbered 1 to 12 in the lease, Defendant's Exhibit "A," appearing on page 36 et seq., of the typewritten record, are substantially in the form of [81] those contained in Plaintiff's Exhibit 1, appearing on page 18 et seq., of the said typewritten record, and that in the preparation of the said printed record herein paragraphs Nos. 1 to 12 of the said Defendant's Exhibit "A" may be omitted.

IT IS FURTHER AGREED that this stipulation shall be incorporated in the said printed record.

Dated this 6th day of December, 1926.

CHARLES W. SLACK and
EDGAR T. ZOOK,

Attorneys for Plaintiff in Error.

REUBEN G. HUNT,
Attorney for Defendant in Error. [82]

[Endorsed]: No. 5019. In the United States Court of Appeals for the Ninth Circuit. O. L. Shafter Estate Company, a Corporation, Plaintiff in Error, vs. W. T. Mooney, Trustee in Bankruptcy of the Estate of William Bartholomew, Defendant in Error. Stipulation as to Printing of Transcript. Filed Dec. 8, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

